IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.130-SB of 1992

Date of Decision: January 24, 2007

Joginder alias Mota & another

...Appellants

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.M.L.Saini, Advocate,
for the appellants.

Mr.Yashwinder Singh, AAG, Haryana,
for the State.

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Joginder Singh alias Mota and Ishwar Singh are in appeal against the order passed by Addl.Sessions Judge, Narnaul convicting both of them under Section 307 IPC. Appellant Joginder Singh alias Mota was convicted for the main offence, whereas Ishwar Singh appellant was held liable with the aid of Section 34 IPC. Appellant Joginder Singh alias Mota was sentenced to suffer rigorous imprisonment for five years and fine of Rs.1000/-, whereas appellant Ishwar Singh was sentenced to three years rigorous imprisonment with similar

amount of fine. Both were also required to undergo six months rigorous imprisonment in default of payment of fine.

The facts, in brief, leading to their conviction and award of the sentence are that on 8.9.1990 Dhup Singh resident of Mohalla Faraskhana Narnaul found appellants Mota Singh and Ishwar present near Haryana Beej Bhandar, while he was returning from Shani Maharaj temple. It is alleged that appellant-accused Ishwar Singh caught hold of Dhup Singh and instructed his co-accused Mota to give a knife blow to Dhup Singh complainant which he did by giving blow in the abdomen. He made another attempt to give a second blow, which the complainant was able to ward off by raising his hand and thus he sustained injury on his right hand palm. Both the appellants bolted from the place when the complainant raised hue and cry, which attracted Sant Lal and Ram Gopal and they rescued the complainant from the appellants-accused. The complainant was taken to General Hospital where he remained admitted. It is on this basis that the trial of the appellants followed, leading to their convictions and sentence, as afore-mentioned.

The case of the prosecution received support from thirteen witnesses, which included the doctor and police officials, who gave evidence in regard to the nature of injuries as well as the investigation done in the matter. The appellants-accused made statements in their defence denying the allegations made by the prosecution witnesses. They, however, did not examine any witness in their defence.

The trial court noticed various contentions raised by and on behalf of the defence, which related to delay in lodging the FIR.

The trial court. after analysing the evidence and relying upon the statement of injured witness Dhup Singh, accepted the version given by the prosecution and held the appellants guilty of the charge preferred against them.

The incident is of the year 1990. The appellants were convicted on 16.3.1992 and their appeal is pending since March, 1992. The counsel for the appellants made a half hearted attempt to make submissions on merits of the case, but mainly stressed that much water has flown since the date of incident, trial and conviction and asking the appellants to undergo this sentence at this belated stage would rather be harsh upon them. With the passage of time, the tempers appear to have cooled down and parties have patched up their differences. It is pointed out by the counsel for the appellants that disputes between the parties have been amicably settled and they are now peacefully living forgetting the past. The counsel submits that the appellants have even compensated the complainant.

It is seen that the appellants and the complainant belong to the same village. It is noticed that both the appellants were almost minors at the time of commission of offence being 17 and 18 years old respectively. Prayer for their release on probation was also made before the trial court. If the provisions of the Juvenile Justice Act, 1986 are taken into consideration, the appellants could be taken as juvenile though under the old Act age for being treated as juvenile was upto 16 years and thus they may not have got the benefit of the same or the probation as they were above the age of 16 years. This fact may not be totally ignored specially when the appellants seem to be repentant. A prayer was made for grant of benefit of Section 360

Cr.P.C. to the appellants. These submissions made on behalf of the appellants, however, were negated by the trial court and they were accordingly sentenced. Drawing my attention to these peculiar facts and circumstances of the case, specially the young age of the appellants at the time of incident and that by now a period of 15 years has passed, the counsel has confined his prayer for taking a lenient view in the case. The counsel would take support from the factum of compromise and compensation to plead a token punishment in the case. It is submitted by the counsel that the appellants have compensated the complainant by paying Rs.20,000/-.

I see justification in the submissions made by the counsel for the appellants. Both the appellants were in their formative years when this incident took place. They were not mature enough to fully realise and understand the consequences of their action. They were in their teens. They are now grown mature and are fully settled. It can also be made out that they have realised their mistake and are obviously repentant. It is because of these reasons that they appear to have settled the issue with the complainant. It is a good gesture to avoid bad blood in future and needs to be encouraged though the offence under Section 307 IPC may not be compoundable. The occurrence being so old, which must have by now faded from the memory of the complainant as well as the appellants. Any harsh treatment may lead to opening the wounds afresh. These need to be balmed. In this regard, I can seek support from the observations of the Hon'ble Supreme Court in the case of Ramphal & Ors. Vs. State of M.P., JT 2000(1) SC 265 wherein offence under Section 304 Part

II was even allowed to be compounded on the basis of a compromise and amicable settlement and the conviction and sentence was set-aside in the interest of justice.

Without interfering in the order of conviction, I am inclined to dispose of this appeal by remitting the sentence awarded to the appellants to the period already undergone by them, specially so when the complainant stands adequately compensated.

The present appeal shall accordingly stand disposed of.

January 24, 2007 (RANJIT SINGH)
ramesh JUDGE